

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

<b>STONI SMITH,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No.:</b>
	)	
<b>v.</b>	)	
	)	
<b>SANTANDER CONSUMER USA, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Santander Consumer USA, Inc. ("Santander"), gives notice of the removal of the case styled *Stoni Smith v. Santander Consumer USA, Inc.*, Case No. 12NW-CV02648, from the Circuit Court of Newton County, Missouri to the United States District Court for the Western District of Missouri. Defendant removes the case without waiving, but reserving all procedural and substantive rights and defenses. Defendants state the following in support of removal and of this notice:

1. On December 5, 2012, Plaintiff Stoni Smith ("Plaintiff") filed her Petition against Santander in the Circuit Court of Newton County, Missouri. Santander was served with the Summons and Petition on December 18, 2012.

2. In her Petition, Plaintiff asserts a claim alleging violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and a state law tort claim for tortious interference with prospective economic relations.

3. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, including claims arising under the FDCPA.

4. This Court has supplemental jurisdiction over Plaintiff's sole tort claim pursuant to 28 U.S.C. § 1367 because Plaintiff's claim for tortious interference with prospective economic relations is so related to the federal claim alleged that they form part of the same case or controversy.

5. Because of this Court's original jurisdiction over Plaintiff's FDCPA claim and supplemental jurisdiction over Plaintiff's remaining state law tort claim, removal of this action is proper under 28 U.S.C. § 1441.

6. There are no other co-defendants whose consent is required for removal.

7. The filing of this Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is within thirty (30) days of receipt by Santander, through service or otherwise, of a copy of the initial pleading setting forth the claims for relief upon which this action is based.

8. The United States District Court for the Western District of Missouri is an appropriate venue for removal purposes pursuant to 28 U.S.C. §§ 1331 and 1441. The Circuit Court of Newton County, Missouri, is located within the Western District of Missouri.

9. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders served upon Santander in this action are attached hereto as Exhibit A. Plaintiff has not served, and Santander has not received, any other process, pleadings or orders.

10. After filing of this Notice of Removal, Santander will file a copy of this Notice with the Clerk of the Circuit Court of Newton County, Missouri, and will provide Notice of Removal to Adverse Party, as provided by 28 U.S.C. § 1446(d).

11. Santander reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendant Santander Consumer USA, Inc. respectfully provides notice of the removal of this action from the Circuit Court of Newton County, Missouri, to the United

States District Court for the Western District of Missouri for all further proceedings, and prays for such other and further relief as the Court deems just and proper.

Respectfully submitted,

**ZERGER & MAUER LLP**

By: /s/ Melody L. Rayl

Steven E. Mauer MO Bar #37162

Melody L. Rayl MO Bar #60362

1100 Main Street, Suite 2100

Kansas City, Missouri 64105

Telephone: (816) 759-3300

FAX: (816) 759-3399

ATTORNEYS FOR DEFENDANT  
SANTANDER CONSUMER USA INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17<sup>th</sup> day of January, 2013, a true and correct copy of the foregoing was filed by CM/ECF and mailed, U.S. first class postage prepaid, to:

David Sims  
SIMS, JOHNSON, WOOD & SIMS  
119 South Washington  
P.O. Box 276  
Neosho, Missouri 64850  
Telephone: 417-451-4141  
Facsimile: 417-451-9581  
dsims@swbell.net  
*Attorney for Plaintiff*

/s/ Melody L. Rayl  
Attorney for Defendant

# Exhibit A

IN THE CIRCUIT COURT OF NEWTON COUNTY, MISSOURI  
ASSOCIATE DIVISION - AT NEOSHO

**FILED**  
DEC 05 2012

PATTY A. KRUEGER  
CLERK OF THE CIRCUIT COURT

Stoni Smith

Plaintiff,

vs.

Case No.

12NW-CV02648

SANTANDER CONSUMER USA, INC.

Registered Agent:

CT Corporation System

120 South Central Avenue

Clayton, MO 63105

Defendant.

**PETITION**

**Facts Common to All Counts**

Comes now Plaintiff, Stoni Smith, by and through her attorney, David Sims, and in support of her Petition, states the following facts common to all counts:

1. That Petitioner is an individual residing in Newton County, Missouri.
2. That Defendant is an Illinois corporation, registered to do business in Missouri, with its registered agent being: CT Corporation System.
3. That Defendant has reported to various credit reporting agencies that Plaintiff is indebted to Defendant in the amount of \$7,000.00.
4. That Plaintiff has disputed the validity of said debt and asked for verification of said debt pursuant to the Fair Debt Collection Practices Act by written document dated January 27, 2012.
5. That Defendant has reported to Plaintiff that said debt relates to an alleged deficiency due after the sale of a 2001 vehicle repossessed by Defendant and sold on or about May 11, 2007.
6. That even if Plaintiff had contractual liability to Defendant, the statute of limitations in Missouri on a deficiency suit after the sale of collateral is 4 years, thus barring collection on this account after May 11, 2011.

7. That on or about February 16, 2011, Plaintiff informed Defendant that the suit was barred by the statute of limitations.
8. That Plaintiff offered to pay Defendant to remove the negative report from Plaintiff's credit history in writing dated February 16, 2012.
9. That Defendant refused to accept any sum from Plaintiff and denied Plaintiff's allegation of invalidity of said debt.
10. That Defendant did not send to Plaintiff any notices required by the Uniform Commercial Code as adopted by the State of Missouri, and is thus not entitled to pursue any deficiency judgment against Plaintiff.

**COUNT I**  
**Violation of the Fair Debt Collection**  
**Practices Act, 15 U.S.C Section 1692, et seq.**

Comes now, Plaintiff, Stoni Smith, by and through her attorney, David Sims, and in support of Count I of her Petition for Violation of the Fair Debt Collection Practices Act, 15 U.S.C Section 1692, et seq. (FDCPA), states the following:

1. That Plaintiff herein incorporates and re-alleges Paragraphs 1-10 of the Facts Common to All Counts as previously alleged.
2. That Defendant violated 15 U.S.C Section 1692e by using false, deceptive, and misleading representations or means in connection with the collection of the alleged debt.
3. That Defendant violated 15 U.S.C Section 1692(g)(b) by failing to provide proper verification of the debt by failing to provide any documentation to Plaintiff, after written request, to show that Plaintiff had any contractual obligation owed to Defendant, despite said representation made to credit reporting agencies.
4. That Defendant violated 15 U.S.C Section 1692(e)(2)(A) by representing to Plaintiff a false statute of limitations period.
5. As a result of the foregoing violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays for judgment against defendant for actual damages, statutory damages, costs, attorneys' fees, and such other relief as the court deems just and proper.

**COUNT II**

**Tortious Interference with Prospective Economic Relations**

Comes now, Plaintiff, Stori Smith, by and through her attorney, David Sims, and in support of Count II of her Petition for Tortious Interference with Prospective Economic Relations, states the following:

1. That Plaintiff herein incorporates and re-alleges Paragraphs 1-10 of the Facts Common to All Counts as previously alleged.
2. That Defendants' acts interfere with Plaintiff's ability to obtain other credit in the form of a home mortgage.
3. As a result of the foregoing, Defendant is liable to Plaintiff for actual damages.

WHEREFORE, Plaintiff prays for judgment against defendant for actual damages, costs, and such other relief as the court deems just and proper.

Respectfully submitted,

**SIMS, JOHNSON, WOOD & SIMS**



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David Sims  
Missouri Bar #51987  
119 South Washington  
P.O. Box 276  
Neosho, Missouri 64850  
Ph: (417) 451-4141  
Fax: (417) 451-9581  
dsims@swbell.net

ATTORNEYS FOR PLAINTIFF





IN THE 40TH JUDICIAL CIRCUIT COURT, NEWTON COUNTY, MISSOURI

S/B 1/11

return

Judge or Division: TIMOTHY WAYNE PERIGO	Case Number: 12NW-CV02648
Plaintiff/Petitioner: STONI JO SMITH	Plaintiff's/Petitioner's Attorney/Address DAVID WILLIAM SIMS 119 S WASHINGTON P O BOX 276 NEOSHO, MO 64850
Defendant/Respondent: SANTANDER CONSUMER USA INC	Court Address: TO BE DETERMINED: 101 S. WOOD NEOSHO, MO 64850
Nature of Suit: CC Other Tort	

**FILED**  
DEC 11 2012  
PATTY A. KRUEGER  
CLERK OF THE CIRCUIT COURT  
(Date File Stamp)

Summons in Civil Case

The State of Missouri to: SANTANDER CONSUMER USA INC  
Alias: C710W DEC 13 2012  
RA : CT CORPORATION SYSTEM  
120 SOUTH CENTRAL AVENUE  
CLAYTON, MO 63105

**COURT SEAL OF**  
  
NEWTON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

12/11/12 Date  
James W. Haden, Jr. Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.  
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.  
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

I hereby certify that on this date DEC 18 2012 (date)  
in St. Louis County, at 120 S. Central Ave. (address), I served  
a copy of the within on the defendant named by CT CORP., THE CORP. CO. (name)  
delivering a copy to CT CORP., THE CORP. CO. (address)  
in St. Louis County (County/City of St. Louis), the registered agent of the defendant, by leaving  
copy with B. Love, E. King, Meehan (name) (time).

Printed Name of Sheriff or Server

Must be sworn before a notary public and by an authorized officer

Subscribed and sworn to before me on DEC 18 2012 (date)  
by James W. Haden, Jr. (name)  
Sheriff, St. Louis County

My commission expires: \_\_\_\_\_

Date

Notary Public

Sheriff's Fees

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

Total \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**FILED**  
DEC 27 2012  
PATTY A. KRUEGER  
CLERK OF THE CIRCUIT COURT

AR 12/14

12-SMCC-15867